

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED AMENDMENT OF THE REGULATIONS

Title 3, California Code of Regulations

Section 3060.3, Plants That Are Pests

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulations are Intended to Address

These regulations are intended to address the obligations of the Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3060.3 is to establish that the weed species that have been designated as noxious weeds by the Secretary do not meet the State's nursery stock standards of cleanliness and cannot be produced, held or offered for sale as nursery stock. Plant species that have been designated as noxious weeds may be subject to various restrictions including the statutory provisions for weed-free areas, noxious weed management, and provisions of the California Seed Law. Management or control activities taken against noxious weeds may both protect California's agricultural industry and protect important native plant species and water resources.

The factual basis for the determination by the Department that amendment of these regulations is necessary is as follows:

Existing law obligates the Department to prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds (Food and Agricultural Code, Section 403).

Section 5004, Food and Agricultural Code, defines "noxious weed" as any species of plant that is, or is liable to be, troublesome, aggressive, intrusive, detrimental, or destructive to agriculture, silviculture, or important native species, and difficult to control or eradicate, which the Secretary, by regulation, designates to be a noxious weed. It also provides that in determining whether or not a species shall be designated a noxious weed for the purposes of protecting silviculture or important native plant species, the Secretary shall not make that designation if the designation will be detrimental to agriculture.

Title 3 of the California Code of Regulations, Section 4500, designates those weed species that are noxious weed species.

Food and Agricultural Code, Section 6901, establishes that the Department shall provide for periodic inspections of nurseries and may prescribe standards of cleanliness for nursery stock which is produced or sold within the state.

Title 3 of the California Code of Regulations, Section 3060.2, establishes the standards of pest cleanliness for nursery stock produced, held, or offered for sale. Section 3060.2 states, "All nursery stock shall be kept commercially clean in respect to established pests of general distribution. Commercially clean shall mean that pests are under effective control, are present only to a light degree, and that only a few of the plants in any lot or block of nursery stock or on the premises show any infestation or infection, and of these none show more than a few individuals of any insect, animal or weed pests or more than a few individual infestations of any plant disease." Additionally, where a county agricultural commissioner or the Department determines that a history of weed pest problems exists, turf shall be grown on soil treated with methyl bromide in accordance with treatment and handling procedures approved by the Department. Weed pests established in and around the growing grounds shall be controlled to a point that they are not likely to infest the growing turf. In addition, it may be required that clean fallowing, trap cropping, or other cultural controls be necessary to assure the pest cleanliness of the turf when shipped.

Food and Agricultural Code, Section 5006, establishes a "Pest" means any of the following things that is, or is liable to be, dangerous or detrimental to the agricultural industry of the state: (c) Any form of vegetable life.

There is now lack of clarity between a statutory mandate, regulations pertaining to noxious weeds, and the enforcement of the regulations pertaining to the nursery stock standards of cleanliness. This is leading to confusion as to how to enforce Section 3060.2 when the plant being grown is itself a "weed pest."

The Department has clearly established through regulation that noxious weed species pose a hazard to agriculture and some native plant species in California. However, some may have been grown in the past or may be currently grown for ornamental purposes in the nursery stock trade. If noxious weeds are growing as a contaminate (weed) in nursery containers along with the desired plant type, it is clear that a stop sale order may be issued under authority of the nursery stock standards of cleanliness regulation, Section 3060.2(a), to prevent its artificial dissemination. However, if the noxious weed is being grown as the desired plant in the nursery container, a stop sale order may not be issued under authority of the nursery stock standards of cleanliness regulation, Section 3060.2(a), to prevent its artificial dissemination.

Noxious weeds are a type of invasive plant which in 1993 directly cost the U.S. \$3.6 to \$5.4 billion annually, with an additional \$1 billion in indirect costs. These invasive plants harm agricultural production by out competing crops for soil and water resources, reducing crop quality, interfere with harvesting operations and reduce land values. The proposed change is consistent with "Pulling Together," the National Strategy for Invasive Plant Management.

The Department proposes to amend Section 3060.3 to clearly establish that the noxious weeds listed under Title 3 of the California Code of Regulations, Section 4500, do not meet the requirements of Section 3060.2 and cannot be produced, held, or offered for sale as nursery stock. The effect of this amendment is to eliminate all noxious weeds from sales through California's nursery industry.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3060.3 does not impose a mandate on local agencies or school districts. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State will result from the proposed action.

The cost impact of the changes in the regulations on private persons or businesses is not expected to be significant.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant adverse economic impact on businesses was based on the following:

The maximum number of nursery stock producers, who may produce nursery stock of the species proposed for addition to the noxious weed species list, has been calculated by the Department as 2,981. These nursery stock producers would discontinue production and sales of these plants after they are listed under Section 3063.3. This may result in a maximum loss of \$797 the first year per producer. After the first year, the affected nursery stock producers would replace any noxious weeds which were affected with new plants that could be sold. The amendments to the regulation do not establish restrictions or reporting requirements with which these producers must comply; therefore, the costs for compliance and losses would not be a significant.

ASSESSMENT

The Department has made an assessment that the proposed amendment to the regulation would not: 1) create or eliminate jobs within California; 2) create new business or eliminate

existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

“Pulling Together, National Strategy for Invasive Plant Management,” undated.

“ESTIMATED ANNUAL ECONOMIC IMPACT PLANTS THAT ARE PESTS AMENDMENT OF SECTION 3060.3,” dated March 21, 2008, California Department of Food and Agriculture, Plant Health and Pest Prevention Services, Permits and Regulations.

Bureau of Land Management’s Weeds Website, printed on March 21, 2008, <http://www.blm.gov/weeds/>.

“Nursery Advisory,” NO. 01-2008, dated February 7, 2008, California Department of Food and Agriculture.

“California Noxious & Invasive Weed Action Plan,” dated September 2005, California Department of Food and Agriculture and California Invasive Weed Awareness Coalition.

“Noxious Weed Management Area Support Program,” dated Legislative Year 2000, California Department of Food and Agriculture, Integrated Pest Control Branch.